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In The

Supreme Court of the United States

October Term, 1998

JOHN W. WESTLING and SHARON WESTLING,

Petitioners,

vs.

COUNTY OF MILLE LACS and STATE OF MINNESOTA,

Respondents.

On Petition For A Writ Of Certiorari To The Minnesota Supreme Court

RESPONDENTS' JOINT BRIEF IN OPPOSITION

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QUESTION PRESENTED

Can the State of Minnesota, consistent with the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, classify and levy a tax upon environmentally contaminated real property in order to strengthen the local tax base, encourage environmentally responsible behavior by property owners, and encourage cleanup of contaminated property?

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RESPONDENTS' BRIEF IN OPPOSITION

Respondents State of Minnesota and County of Mille Lacs respectfully request that this Court deny the Petition for a Writ of Certiorari (hereinafter "Petition" or "Pet.") seeking review of the decision of the Minnesota Supreme Court in this case.

OPINION BELOW

The decision of the Minnesota Supreme Court is reported at 581 N.W.2d 815 (Minn. 1998) and is reprinted in the Appendix to the Petition (hereinafter "Pet. App.") at pages A-1 to A-16.

STATEMENT OF THE CASE

This case arises from Petitioners' challenge to the constitutionality of the contamination tax imposed under the tax laws of the State of Minnesota in Minn. Stat. §§ 270.91-.98 (1996). *See* Pet. App. A-29 to A-35. The contamination tax is imposed on real property where the presence of certain environmental contaminants has resulted in a reduction of market value for ad valorem property tax purposes. *See* Minn. Stat. § 270.91, subd. 1 (1996); Pet. App. A-29. The amount of the tax is calculated based upon several factors, including the property's "contamination value," the "class rate" used for ad valorem property tax purposes for the type of property involved, the property owner's legal responsibility for

the contamination under certain state environmental statutes,[1] and whether a cleanup plan has been approved or implemented to remedy the contamination. *See* Minn. Stat. § 270.91 (1996); Pet. App. A-29 to A-31. "Contamination value" is defined by law as "the amount of the market value reduction, if any, that is granted for general ad valorem property tax purposes for the assessment year because of the presence of contaminants." Minn. Stat. § 270.93 (1996); Pet. App. A-32. "Class rates" for different types of real property, such as residential, agricultural, and industrial property, are established under Minn. Stat. § 273.13 (1996).

The contamination tax creates an incentive for property owners to clean up environmental contamination, and functions to recapture a portion of the tax revenue lost due to market value reductions stemming from continuing, unremedied contamination. The rate of the contamination tax, and thus the strength of the cleanup incentive and the extent of the revenue recapture, depends upon the owner's legal responsibility for the contamination and the status of any cleanup action. The initial rate of the contamination tax is calculated by multiplying 100 percent of the class rate for the property type by the contamination value of the property. *See* Minn. Stat. § 270.91, subd. 2 (1996); Pet. App. A-29. This yields

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[1] The rate of the contamination tax takes into account whether the property owner is a person responsible for the contamination under either of two state statutes, the Minnesota Environmental Response and Liability Act, Minn. Stat. §§ 115B.01-.241 (1996), and the agricultural chemical incident response law, Minn. Stat. ch. 18D (1996). *See* Minn. Stat. § 270.91, subds. 3 and 4(d) (1996); Pet. App. A-29 to A-31.

the highest contamination tax rate. When the property owner is implementing an approved cleanup plan to remedy the contamination, the tax is calculated using 50 percent of the class rate, thus cutting the contamination tax rate in half. *See* Minn. Stat. § 270.91, subd. 4(a)-(c) (1996); Pet. App. A-30. If the property owner is not legally responsible for the contamination, the class rate used to calculate the tax is reduced to 25 percent, with a further reduction to 12.5 percent if a non-responsible person is implementing an approved cleanup plan. *See* Minn. Stat. § 270.91, subds. 3 and 4(d) (1996); Pet. App. A-30 to A-31. When cleanup under an approved plan is complete, the contamination tax no longer applies. *See* Minn. Stat. § 270.94 (1996); Pet. App. A-32 to A-33.

Petitioners own certain real property in Mille Lacs County, Minnesota. The property is industrial property, including an 88,000 square foot office and warehouse building. The property is leased by Petitioners for an annual rent of $114,000 to Westling Manufacturing Company, an automotive parts remanufacturing business. *See Westling v. County of Mille Lacs*, 581 N.W.2d 815, 817 (Minn. 1998); Pet. App. A-2. The property is contaminated with tetrachloroethene, a chemical used in the remanufacturing process. *See id.;* Pet. App. A-2. Petitioner John Westling is the president of Westling Manufacturing Company, and has been determined to be legally responsible for contamination of the property. *See id.* at 817-18 and n.2; Pet. App. A-2 to A-3 and n.2. Based on the presence of contamination on the property, Petitioners sought a reduction in the market value of the property for ad valorem property tax purposes. After several judicial proceedings on the question of valuation, Mille Lacs

County reduced the assessed market value of the property, taking environmental contamination into account, to zero.[2]

Because the assessed market value of the property for ad valorem tax purposes was reduced to zero, Petitioners paid no ad valorem property tax on the subject property in 1994 and 1995. However, under the contamination tax statute at issue in the case below, Mille Lacs County was required to assess a contamination tax on Petitioners' property, because the reduction in market value granted for the property had been caused by the environmental contamination. Mille Lacs County calculated a contamination tax for Petitioners' property by multiplying its "contamination value" (the amount by which the property's market value had been reduced due to contamination) by 50 percent of the class rate for industrial property (the class rate reduction applicable because Petitioners were implementing an approved cleanup plan to remedy the contamination). *See Westling*, 581 N.W.2d at 819; Pet. App. A-6. This calculation resulted in an assessment of contamination taxes for Petitioners' property of $22,278.50 payable in 1995, and $36,000 payable in 1996.

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[2] The market value reduction was granted by Mille Lacs County after the Minnesota Supreme Court decided *Westling v. County of Mille Lacs*, 543 N.W.2d 91, 93 (Minn. 1996), which affirmed the Minnesota Tax Court's decision that Petitioners' property had zero market value for ad valorem property tax purposes due to the presence of environmental contamination. The procedural history of Petitioners' tax litigation regarding the market value of this property for ad valorem property tax purposes is summarized in the Memorandum of the Minnesota Tax Court included in the Appendix to the Petition. *See* Pet. App. A-20.

See id.; Pet. App. A-6. Petitioners have not contested Mille Lacs County's calculation of the contamination value or contamination tax for the subject property. *See id.* at 819 n.5; Pet. App. A-6 n.5.

Petitioners challenged the constitutionality of the contamination tax by bringing an action against Mille Lacs County in the Minnesota Tax Court. In that action, Petitioners argued that the contamination tax violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution (as well as the Uniformity Clause of Article X, Section 1 of the Minnesota Constitution[3]) and the Takings Clause of the Fifth Amendment to the United States Constitution (as well as the similar provision of Article I, Section 13 of the Minnesota Constitution). The Minnesota Tax Court held against Petitioners on both the equal protection and takings arguments, and upheld the tax. *See* Pet. App. A-17 to A-25. Petitioners appealed the same constitutional issues to the Minnesota Supreme Court, which also held against Petitioners on their equal protection and takings challenges, and again upheld the statute.[4] *See Westling*, 581 N.W.2d at 823-24; Pet. App. A-16.

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[3] The Uniformity Clause provides that "[t]axes shall be uniform upon the same class of subjects." Minn. Const. art. X, § 1; Pet. App. A-28.

[4] On October 23, 1997, the Minnesota Supreme Court issued an order to the Attorney General of the State of Minnesota requesting the Attorney General to consider participating in the case. The Attorney General then moved to intervene on behalf of the State in the proceedings before the Minnesota Supreme Court. The court's order granting the State's motion was filed on November 18, 1997.

In their Petition for a Writ of Certiorari, Petitioners argue only that Minnesota's contamination tax violates the Equal Protection Clause of the Fourteenth Amendment. For the reasons that follow, Respondents State of Minnesota and Mille Lacs County urge the Court to deny the Petition.

REASONS FOR DENYING THE PETITION

Petitioners make two arguments as to why this Court should review the Minnesota Supreme Court's decision denying Petitioners' equal protection challenge to Minnesota's contamination tax. First, Petitioners assert that the decision below is in direct conflict with decisions of this Court in other equal protection challenges to tax statutes. *See* Pet. at 5. Specifically, Petitioners argue that the decision below conflicts with a purported "fundamental constitutional principle" that "imposition of property taxes on any basis other than assessed property value violates the Equal Protection Clause of the Fourteenth Amendment." Pet. at 5-6. Second, Petitioners argue that the case below is an important one for review because it affects many Minnesota property owners. *See* Pet. 5. There is no merit to either of Petitioners' arguments.

First, and most importantly, there is no conflict between the decision below and the equal protection decisions of this Court. Petitioners' argument ignores the well-established decisions of this Court that apply a highly deferential rational basis test in analyzing state tax

legislation. The court below applied constitutional standards that fully comport with the equal protection standards established in this Court's decisions and reached the correct result. Petitioners' argument that the decision below conflicts with a "fundamental constitutional principle" that property may be taxed only on the basis of assessed property value completely misses the mark. *See* Pet. at 5-6. Under the decisions of this Court, the only question to be decided in an equal protection challenge to a state tax classification is whether the difference in treatment imposed by the classification rationally furthers a legitimate state interest. Petitioners have cited no precedents of this Court that hold that assessed property value is the only basis on which a state legislature may classify property for tax purposes.

Second, the case below is not sufficiently important to warrant review by this Court. The decision below affects only the taxation of real property within the State of Minnesota, under a statute that is based on particular local circumstances. There is nothing in the record below to support Petitioners' assertion that the tax affects "many Minnesota property owners." Nor do Petitioners make any assertion that the challenged tax statute discriminates against foreign citizens or corporations. Furthermore, there is no conflict between the decision in the case below and the holding of any federal appellate court or other state court of last resort, and Petitioners do not assert that any such conflict exists.

For these reasons, as more fully explained below, the Petition for a Writ of Certiorari should be denied.

I. THERE IS NO CONFLICT BETWEEN THE DECISION BELOW AND THE WELL-ESTABLISHED EQUAL PROTECTION PRINCIPLES APPLIED BY THIS COURT.

Petitioners incorrectly assert that the decision of the court below, upholding Minnesota's contamination tax on equal protection grounds, conflicts with decisions of this Court. There is no conflict. Petitioners' argument ignores the standards established by this Court to determine whether a tax classification violates the Equal Protection Clause. This case simply involves the application of the well-established rational basis test to the particular Minnesota tax challenged. The Minnesota Supreme Court applied the correct standards and reached the correct result in the decision below, concluding that Minnesota's contamination tax does not violate the Equal Protection Clause.

A. The Court Below Applied A Rational Basis Test Consistent With This Court's Well-Established Standards For Evaluating Equal Protection Challenges To State Tax Statutes.

The equal protection principles applied by this Court recognize that most laws differentiate between classes of persons and that the Equal Protection Clause does not forbid such classifications. *See Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992). Thus, this Court has consistently held that a statutory classification that neither infringes upon a fundamental constitutional right nor is based upon a suspect characteristic must be upheld so long as it satisfies a rational basis test. *See id.* at 10 and cases cited therein. This Court has consistently applied the rational basis test

to state tax legislation. *See General Motors Corp. v. Tracy*, 519 U.S. 278, ___, 117 S. Ct. 811, 830 (1997); *Nordlinger*, 505 U.S. at 10-13; *Allegheny Pittsburgh Coal Co. v. County Comm'n*, 488 U.S. 336, 343-44 (1989).

Under well-established standards for analyzing equal protection challenges, state legislatures are given especially wide latitude in making tax classifications. In this oft-quoted passage from *Madden v. Kentucky*, this Court stated:

> [T]he passage of time has only served to underscore the wisdom of that recognition of the large area of discretion which is needed by a legislature in formulating sound tax policies. Traditionally classification has been a device for fitting tax programs to local needs and usages in order to achieve an equitable distribution of the tax burden. It has, because of this, been pointed out that in taxation, even more than in other fields, legislatures possess the greatest freedom in classification. Since the members of a legislature necessarily enjoy a familiarity with local conditions which this Court cannot have, the presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons or classes. The burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it.

309 U.S. 83, 88 (1940) (footnotes omitted); *see, e.g., Regan v. Taxation With Representation of Wash.*, 461 U.S. 540, 547 (1983); *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 40-41 (1973).

Under this Court's rational basis test, a tax classification does not violate the Equal Protection Clause so long as the classification "rationally furthers a legitimate state interest." *Nordlinger*, 505 U.S. at 11. In *Nordlinger v. Hahn*, this Court indicated that three factors should be considered in determining whether the Equal Protection Clause is satisfied. *See* 505 U.S. at 11. First, a court should consider whether "there is a plausible policy reason for the classification." *Id.* Second, a court should consider whether "the legislative facts on which the classification is apparently based rationally may have been considered to be true by the governmental decisionmaker." *Id.* Third, the court must determine that the relationship of the classification to its purpose is not so attenuated as to render the distinction arbitrary or irrational. *See id.* This Court has continued to apply this rational basis test in other cases and it need not be reconsidered. *See, e.g., General Motors Corp.*, 519 U.S. 278 at ___, 117 S. Ct. at 830 (1997); *Federal Communications Comm'n v. Beach Communication*, 508 U.S. 307, 314-15 (1993).

Like this Court, the Minnesota Supreme Court applies a rational basis test in evaluating equal protection challenges to tax statutes. The court below articulated the rational basis test as follows:

> The test consists of three prongs; (1) The distinctions which separate those included within the classification from those excluded must not be manifestly arbitrary or fanciful but must be genuine and substantial, thereby providing a natural and reasonable basis to justify legislation adapted to peculiar conditions and needs; (2) the classification must be genuine or relevant to the purpose of the law; that is, there must be an

> evident connection between the distinctive needs peculiar to the class and the prescribed remedy; (3) the purpose of the statute must be one that the state can legitimately attempt to achieve.

Westling v. County of Mille Lacs, 581 N.W.2d 815, 820 (Minn. 1998); Pet. App. A-8 (quoting *Miller Brewing Co. v. State*, 283 N.W.2d 353, 356 (Minn. 1979)). This is the test applied by the Minnesota Supreme Court in determining that the contamination tax satisfies equal protection requirements. *See id.* at 820-22; Pet. App. A-8 to A-13.[5]

Although the Minnesota Supreme Court articulates its rational basis test somewhat differently from the test as articulated by this Court, it considers all of the factors required by this Court when it applies its three-pronged test. The first factor in this Court's rational basis test, that there be a "plausible policy reason" for the classification, is considered by the Minnesota Supreme Court under its requirement that the statute must be based on a purpose that the state can legitimately attempt to achieve. *See id.*

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[5] In the court below, Petitioners asserted that the contamination tax violated both the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and the Uniformity Clause of Article X, Section 1, of the Minnesota Constitution. The Minnesota Supreme Court began its analysis of Petitioners' equal protection challenge by restating an earlier holding that the Uniformity Clause of the Minnesota Constitution is no more restrictive upon the legislature's power to tax or classify than the Equal Protection Clause of the Fourteenth Amendment. *See Westling*, 581 N.W.2d at 820; Pet. App. A-7 (citing *Kuiters v. County of Freeborn*, 430 N.W.2d 461, 463 (Minn. 1988)). Thus, the court below applied the same rational basis test to analyze both Petitioners' equal protection and uniformity challenges.

at 820; Pet. App. A-8. The second factor in this Court's rational basis test, that there are "legislative facts" underlying the classification which the legislature may reasonably have considered to be true, is taken into account by the Minnesota Supreme Court under its requirement that the distinctions underlying the classification must be "genuine and substantial" and provide "a natural and reasonable basis to justify legislation adapted to peculiar conditions and needs." *See id;* Pet. App. A-8. The third factor in this Court's rational basis test, that the relationship between the classification and its purpose not be so attenuated as to render the distinction arbitrary or irrational, is considered by the Minnesota Supreme Court under its requirement that there be an evident connection between the public policy sought to be furthered and the prescribed remedy. *See id.;* Pet. App. A-8. Thus, although the Minnesota Supreme Court's rational basis standard is articulated somewhat differently from the test applied by this Court, the standard applied by the court below conforms to the equal protection decisions of this Court.

B. The Court Below Correctly Determined That The Contamination Tax Does Not Violate The Equal Protection Clause.

Applying its three-pronged rational basis test – a test that fully comports with the principles established by this Court – the Minnesota Supreme Court correctly rejected Petitioners' equal protection challenge to the Minnesota contamination tax.

The Minnesota Supreme Court first considered whether the distinctions underlying the contamination

tax were genuine and rational ones. The court determined that the legislature used three criteria to classify property under the contamination tax statute: (1) whether the property had experienced a market value reduction due to contamination; (2) whether the owner was legally responsible for the contamination; and (3) whether an approved cleanup plan to remedy the contamination had been implemented.[6] *See Westling*, 581 N.W.2d at 820-21; Pet. App. A-10. The court further found that these legislative criteria were based on recognition of certain facts which, though not articulated in the statute itself, provide a reasonable basis for the legislature to select these criteria. Thus, the court below stated that the criteria

> are based on a recognition that contaminated property diminishes the *ad valorem* property tax base relied upon by local taxing authorities. In addition, the presence of contaminated property in a community may result in increased health risks, in decreased valuations for nearby properties, and in abandonment or underutilization of property, thereby contributing to community blight and economic distress. Contaminated property thereby poses a greater burden on society than uncontaminated property. Further, the long term magnitude of that burden will vary, depending on whether there is a "responsible party" implementing an approved "response plan."

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[6] The Minnesota Supreme Court thus rejected Petitioners' arguments, which they have reiterated in the Petition, that Minnesota's contamination tax statute did not create any new classes of property. *See Westling*, 581 N.W.2d at 820-21; Pet. App. A-8 to A-11; *see also* Pet. at 8.

Id. at 821; Pet. App. A-10 to A-11. Based on this discussion, the court correctly concluded that the legislative criteria were genuine and rational bases for creating the separate tax classification for contaminated property. *See id.*; Pet. App. A-11.

The court next considered whether the classification scheme was reasonably related to the purposes of the statute. The court determined that, although the statute does not contain an express statement of legislative purpose, the purposes of the contamination tax can be observed from its operation. *See id.*; Pet. App. A-11. Thus, the court observed that the contamination tax operates to recapture revenue lost to counties that continue to provide services to contaminated properties, and requires the owners to pay some of the costs of the benefits received from such services. *See id.*; Pet. App. A-11. The contamination tax also acts as an incentive to owners to clean up contaminated properties, and encourages responsible behavior by owners of uncontaminated property. *Id.* at 821-22; Pet. App. A-11 to A-12. Based on its analysis of the operation of the tax, the court identified three purposes for the statute: (1) strengthening the local tax base; (2) encouraging environmentally responsible behavior by owners of property; and (3) encouraging cleanup of environmentally contaminated property. *See id.* at 822; Pet. App. A-12. The court then correctly held that the classifications used to enact the contamination tax are rationally related to the purposes effected by the statute. *See id.* at 822; Pet. App. A-13.

Applying the third prong of its rational basis test, the court also considered whether the purpose of the contamination tax is one that the state can legitimately attempt

to achieve. The court determined that the three legislative objectives it had identified based on the operation of the tax "are legitimate public purposes that the legislature may have intended to achieve by enactment of the contamination tax." *Id.*; Pet. App. A-12. The court further held that it was "beyond question" that the generation of revenue and the cleanup of environmental contamination are legitimate government purposes. *See id.*; Pet. App. A-13.

Thus, based upon the application of its three-pronged rational basis test, the Minnesota Supreme Court correctly concluded that the contamination tax did not violate the Equal Protection Clause.[7] *See Westling*, 581 N.W.2d at 822; Pet. App. A-13. The test applied by the Minnesota Supreme Court in this case is fully consistent with the equal protection principles applied by this Court. Therefore, there is no basis for Petitioners' argument that the decision below conflicts with the equal protection decisions of this Court. Accordingly, the Petition for a Writ of Certiorari should be denied.

C. Petitioners' Argument That The Decision Below Conflicts With A Fundamental Constitutional Principle Of Property Taxation Does Not Support Their Equal Protection Challenge.

In their argument for review, Petitioners avoid discussion of the rational basis test applied by this Court to

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[7] The court also rejected Petitioners' challenge under the takings provisions of the state and federal constitutions. *See Westling*, 581 N.W.2d at 823; Pet. App. A-13 to A-16. Petitioners are not seeking review of that holding.

analyze equal protection challenges and instead claim that the decision below conflicts with the principle that "imposition of property taxes on any basis other than assessed value violates the Equal Protection Clause of the Fourteenth Amendment." Pet. at 5. Petitioners assert that this principle has been "repeatedly held" by this Court and is a "fundamental constitutional principle of taxation." Pet. at 5-6. Petitioners' argument for review lacks merit for several reasons.

First, the cases cited by Petitioners do not support their assertion that this Court has repeatedly, or ever, incorporated into its equal protection jurisprudence the principle that property taxation may only be based upon the assessed value of the property. The cited cases all stand for other principles of law, such as the proposition that individuals within the *same* tax classification are entitled to be treated in the same manner, or that state officials may not intentionally use a discriminatory valuation scheme in assessing properties within the *same* class.[8]

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[8] *See Cumberland Coal Co. v. Board of Revision of Tax Assessments*, 284 U.S. 23, 28-29 (1931) (holding that county commissioners intentionally and systematically undervalued some coal within the same classification of property); *Hopkins v. Southern Cal. Tel. Co.*, 275 U.S. 393, 403 (1927) (construing the purpose of an amendment to the California Constitution); *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441, 446 (1923) (holding that county officials may not intentionally tax properties within the same class differently). Another case cited by Petitioners stands for the proposition that it is the effect of a tax which defines its classification rather than the title the legislature gives to the tax. *See Dawson v. Kentucky Distilleries & Warehouse Co.*, 255 U.S. 288, 292-93 (1921). Two cases merely hold that a state may not discriminate against a corporation based solely on its

Petitioners have not asserted that either the contamination tax statute, or its administration by Mille Lacs County tax officials, has treated Petitioners' contaminated property differently from other similar environmentally contaminated property.[9] Therefore, there is no conflict between the decisions of this Court cited by Petitioners and the decision below.

Second, this Court has previously rejected the proposition that state tax classifications must be assessed on "actual" value. *See Bell's Gap R.R. Co. v. Pennsylvania*, 134 U.S. 232, 237 (1890) (recognizing that "the fourteenth amendment was not intended to compel states to adopt an iron rule of equal taxation" and rejecting the argument that taxes must be based upon "actual" value). This Court recently upheld a property tax classification based upon criteria unrelated to value. *See Nordlinger*, 505 U.S. at 12 (holding that a state's legitimate interest in local neighborhood preservation, continuity, and stability provided a rational basis for assessing property owned by old owners more favorably than property owned by new

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foreign incorporation. *See WHYY, Inc. v. Borough of Glassboro*, 393 U.S. 117, 119-20 (1968); *Wheeling Steel Corp. v. Glander*, 337 U.S. 562, 571-72 (1949). The remaining cited cases do not involve an equal protection challenge at all. *See Wagner v. City of Covington*, 251 U.S. 95, 102 (1919) (holding that a state tax statute does not violate the Commerce Clause if it treats all commerce the same); *Adams Express Co. v. Ohio State Auditor*, 166 U.S. 185, 224-25 (1897) (holding that corporations may not escape state tax liability simply because most of their property is intangible).

[9] Petitioners have not contested the county assessor's factual determination of either the contamination value or the contamination tax for their property. *See Westling*, 581 N.W.2d at 819 n.5; Pet. App. A-6 n.5.

owners). The Equal Protection Clause requires only that the basis for a tax classification be a reasonable one, not that it must in all cases be related to property value. The court below applied that requirement and correctly held that the classifications in the Minnesota contamination tax are reasonable.

Third, by focusing their argument on the purported "fundamental principle" that taxation of property on any basis other than assessed value violates the Equal Protection Clause, Petitioners have misstated the holding in the case below and ignored the legal principles supporting that holding. Petitioners' claim that the Minnesota Supreme Court approved a tax statute that arbitrarily imposes a tax upon "fictional" or "imaginary" value in violation of the Equal Protection Clause. *See* Pet. at 7. Similarly, Petitioners view the equal protection issue in this case as whether the state legislature has the ability "to create fictional property values and then direct that taxes be assessed upon those 'values' as if they represented actual pecuniary value." Pet. at 11. Contrary to Petitioners' assertions, both the contamination tax statute and the court's analysis in the decision below make clear that there is nothing fictional or imaginary about the factors used to determine the contamination tax. Petitioners' arguments distort the language and operation of the contamination tax statute, as well as the analysis and decision of the court below which upheld the statute on equal protection grounds.

To begin with, the dollar amount to which the contamination tax is applied, the "contamination value" as defined by the statute is based on considerations of

value. It is calculated in each assessment year by determining the difference between the property's initial market value for ad valorem property tax purposes in that year (the property value but for contamination), and the value to which it is reduced in that year because contaminants are present on the property. *See* Minn. Stat. § 270.93 (1996); Pet. App. A-32. In 1994 the initial market value of Petitioners' property was $1,033,400, but its market value was reduced to zero due to contamination, yielding a difference – the contamination value – of $1,033,400. *See Westling v. County of Mille Lacs*, 581 N.W.2d at 819; Pet. App. A-6. In 1995, the initial market value increased to $1,600,000 but the reduced value remained at zero, for a contamination value of $1,600,000. *Id.*; Pet. App. A-6. It is this contamination value, a dollar figure determined by Mille Lacs County based on considerations of value, that serves initially as the basis for calculating a contamination tax on the property. *See* Minn. Stat. § 270.91, subd. 1 (1996); Pet. App A-29. Mille Lacs County's calculation of contamination value was not contested by the Petitioners in the proceedings below. *See Westling v. County of Mille Lacs*, 581 N.W.2d at 819 n.5; Pet. App. A-6 n.5.

Once contamination value was calculated, the amount of the contamination tax actually payable by Petitioners was determined by multiplying the contamination value by a rate that depends upon whether Petitioners were legally responsible for the contamination and whether they were implementing an approved plan to remedy the contamination. *See* Minn. Stat. § 270.91, subds. 3 and 4 (1996); Pet. App. A-29-31. Because Petitioner John Westling was determined to be legally responsible for the contamination and because Petitioners

are implementing an approved cleanup plan, Mille Lacs County calculated the contamination tax payable by Petitioners by multiplying the contamination value by a rate of 50 percent of the class rate for industrial property. *See Westling*, 581 N.W.2d at 819; Pet. App. A-6. Petitioners did not contest Mille Lacs County's calculation of the contamination tax. *See id.* at 819 n.5; Pet. App. A-6 n.5.

Furthermore, the reasonableness of the statutory mechanism for imposing this tax on contaminated property was thoroughly addressed by the court below using a rational basis analysis consistent with the decisions of this Court. The court below found that the contamination tax reasonably serves legitimate public purposes of strengthening local tax base, encouraging environmentally responsible behavior by property owners, and encouraging cleanup of contaminated property. *See id.* at 822; Pet. App. A-12. In short, nothing in the decision below, or in the contamination tax statute, supports Petitioners' assertion that the Minnesota Supreme Court has approved a statute that arbitrarily creates a tax on "fictional" or "imaginary" values. Therefore, the question presented in this case under the Equal Protection Clause is not, as Petitioners have stated it, whether Minnesota can impose a tax on fictional value. Rather, the question is whether Minnesota's contamination tax constitutes a proper tax classification that meets the requirements of the Equal Protection Clause. Respondents have restated the question to accurately reflect the issues considered and decided by the Court below, and to correctly identify the question that would be before this Court if certiorari were granted.

For all of the reasons stated above, there is no conflict between the decision of the Minnesota Supreme Court in this case and the well-established equal protection principles applied by this Court to state tax legislation. Therefore, Petitioners' argument that there is a conflict is without merit and the Petition for a Writ of Certiorari should be denied.

II. THE DECISION BELOW DOES NOT WARRANT REVIEW BY THIS COURT BASED ON ANY IMPORTANT QUESTION OR ANY CONFLICT WITH OTHER APPELLATE DECISIONS.

Petitioners assert that the question presented by the case below is an important one because "it affects many Minnesota property owners." Pet. at 5. There is no evidence in the record below to support this assertion. There is no reason to believe that the tax will have a large impact within the State of Minnesota.

In addition, there is no evidence that this case will have any impact outside of Minnesota. The tax applies only to real property located in the State of Minnesota and was enacted in response to a perceived local problem. Petitioners do not assert that the tax discriminates against foreign citizens or corporations. The statute appears to be unique to Minnesota; Petitioners have not cited, and Respondents are not aware of, any similar statutes of other states. Thus there is no reason to believe that this issue will recur in other jurisdictions.

Finally, Petitioners have not cited and Respondents are not aware of any conflict between the decision below and any decision of any federal court of appeals or state appellate court of last resort. Therefore, no review is needed to resolve any conflict between the decisions of lower courts.

CONCLUSION

For all of the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

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Respectfully submitted

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